Supreme Court, U.S.
FILED
APR 29 1993
OFFICE OF THE CLERK

No. 91-1523

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

FLORENCE COUNTY SCHOOL DISTRICT FOUR, ERNEST K. NICHOLSON, SUPERINTENDENT, IN HIS OFFICIAL CAPACITY, AND SCHOOL BOARD MEMBERS BENNIE ANDERSON, MONROE FRIDAY, JACK ODOM, ELRITA BACOTE, T.R. GREEN, JAMES W. HICKS, IN THEIR OFFICIAL CAPACITY,

Petitioners,

v.

SHANNON CARTER, BY AND THROUGH HER FATHER AND NEXT FRIEND, EMORY CARTER,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

JOINT APPENDIX

DONALD B. AYER
(Counsel of Record)
BETH HEIFETZ
DAVID A. YALOF
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3939

Of Counsel
BRUCE E. DAVIS
1704 Fair Street
Camden, S.C. 29020
(803) 432-2880

Counsel for Petitioners

PETER W.D. WRIGHT
(Counsel of Record)
Court House Commons
4104 East Parham Road
Richmond, VA 23228
(804) 755-3000

NANCY McCORMICK
SOUTH CAROLINA PROTECTION & ADVOCACY SYSTEM FOR THE HANDICAPPED, INC.
Suite 208
3810 Landmark Drive
Columbia, S.C. 29204
(803) 782-0639

Counsel for Respondents

TABLE OF CONTENTS

	Page
Relevant Docket Entries	1
Transcript Excerpts, U.S. District Court for the District of South Carolina	3
January 13-14, 1988 Proceedings	3
May 9, 1989 Proceedings	22
Order Granting Petition for a Writ of Certiorari (February 22, 1993)	26

RELEVANT DOCKET ENTRIES

I. United States District Court for the District of South Carolina

1.	7/30/86	- Complaint filed.
2.	8/22/86	- Motion of Defendants To Dismiss filed.
3.	3/13/87	- Motions Hearing.
4.	3/30/87	- Motion of Defendants for Summary Judgment filed.
5.	5/6/87	- Order granting Defendant's Motion for Summary Judgment on all of Plaintiff's claims entered.
6.	5/6/87	- Judgment entered for the Defendants and Complaint dismissed.
7.	5/29/87	- Notice of Appeal by Plaintiff of Judgment entered 5/6/87 filed.
8.	6/17/87	- Motion by Plaintiff for Relief from Judgment entered 5/6/87 filed.
9.	7/27/87	- Order that Plaintiff's request for relief pursuant to 60(b)(6) be denied as to the court's exclusivity ruling and granted on the limitations period ruling entered.
10.	1/13/88	- Non-jury Trial.
11.	1/14/88	- Non-jury Trial continued.
12.	5/9/89	- Non-jury Trial continued.
13.	1/30/91	- Findings of Fact and Conclusions of Law and Order entered.
14.	2/6/91	- Judgment entered.
15.	3/7/91	- Notice of Appeal by Defendant of Judgment entered 2/6/91 filed.

RELEVANT DOCKET ENTRIES (Cont.)

II. United States Court of Appeals for the Fourth Circuit

1.	3/20/91	- Civil case docketed.
2.	5/15/91	- Brief and joint appendix filed by Appellants.
3.	6/12/91	- Brief filed by Appellee.
4.	6/25/91	- Reply brief filed by Appellants.
5.	9/30/91	- Oral argument heard.
6.	11/26/91	- Published, authored opinion filed (91-1047).
7.	11/26/91	- Judgment order filed.

III. United States Supreme Court

1.	3/23/92	- Petition for a writ of certiorari filed.
2.	2/22/93	- Petition for a writ of certiorari granted, limited to Question 1.

TRANSCRIPT EXCERPTS
U.S. District Court for the District of South Carolina (Florence)

January 13-14, 1988 Proceedings

[TESTIMONY OF CECIL RAY HILL]

[2] * * *
BY MR. BURLINGTON:
Q Mr. Hill. Please state your full name for the record.
A Cecil Ray Hill.
* * *
Q Where did you work during the 1982, '83 school year?
A Florence District 4.
Q What was your position at that time?
A Guidance Counselor. Educational evaluator.
* * * [3] * * *
Q Did you ever have the occasion to evaluate or screen Shannon Carter?
A Yes.
Q About when was that?
A This would have been February of '83.
* * * [4] * * *
Q What kinds of testing did you do on Shannon Carter?
A I gave her an I.Q. test and an achievement test.
* * *
Q Do you have copies of this testing or your report?
A No. I don't.
Q Why is that?
A Well. When this first came up in '85, I guess, I looked for results. And I have looked for them probably half dozen times since. And I was very surprised that I couldn't find them. I don't know. They were probably mixed in with something. Whether they disappeared, I don't know.
[6] * * *

Q As a result of your screening in 1983, did you detect any learning disability extant in Shannon Carter?
A No. Not according to the guidelines we follow.
* * * [8] * * *
Q To what did you attribute her lack of academic success at that time?
[9]
A I had no knowledge of what she was doing in the class, you know. With a below average I.Q. and below average achievement. The achievement being similar to, you know, the deficit in I.Q. You would expect maybe slightly a slow learner, slightly on the slow side, you know.
* * * [10] * * *
Q You mentioned about certification by the state. Are you certified by the state as a school psychologist?
A I haven't received a certification. I just completed the internship.
Q And you were not certified back in 1983 as a school psychologist?
A That's right. I lacked two courses and an internship.
* * * [30] * * *

[TESTIMONY OF GLORIA NELSON]

Q Ms. Nelson, please state your full name for the record.
A Gloria V. Horne Nelson.
* * *
Q Where were you working during the 1984, 1985 school year?
A In Florence District 4.
* * * [31]
Q Did you hold that same position back in 1985?
A I was only the coordinator of programs for the handicapped at that time.
* * * [50] * * *
Q Now, was there much discussion the day of the I.E.P. about what would be the appropriate goals for Shannon in terms of the I.E.P. goals and objectives?
A Yes. There was discussion.
Q Do you remember, was there a reading goal?
[51]

A Yes. There was a reading goal.
Q Do you remember what it is?
* * *
A From a 5.4 grade level to approximately 5.8 grade level. I think.
Q Was there also a math goal?
A Yes. There was a math goal. Do I need to read that?
Q Briefly.
A Improve math skills from 6.4 to 6.8 grade equivalent. Measured by the Key Math Diagnostic test.
* * * [52]
Q If you could look at the first page. Does this I.E.P. have a starting date?
A It says that the date of implementation would be May 2, 1985.
Q Does it have an annual review date?
A By May 1, '86.
Q A one year time frame?
A Yes.
* * * [105] * * *
Q Did you ever discuss at this meeting a multi-district [106] agreement being a possibility as placement for Shannon?
A No, that would have been a more restrictive environment than they were discussing. When we weren't agreeing or discussing resource, why would we discuss that?
Q You stated that an L.D. self-contained placement was briefly mentioned. Yet you've also stated you didn't have an L.D. self-contained available. So it would seem logical you would discuss the possibilities inherent --
A We didn't have an L.D. self-contained placement in our district. That does not mean we didn't have that within our capabilities.
Q Was it communicated to the Carters that this was within your capabilities?
A If I discussed and described the continuum of programs, then, I was describing what possibly would be available or worked out. So I would think that they would assume that I would not be describing something that was beyond our capability.

Q But you don't remember describing a multi-district agreement per se with them?

A I didn't call the L.D. self-contained program a multi-district agreement, because we always have the option of creating a self-contained L.D. placement within our own district if we can find the certified teacher and the space.

Q Have you ever made a multi-district L.D. self-contained [107] placement?

A Not L.D. I have other categories of handicapped conditions.

Q You say it's possible that you could have an L.D. self-contained placement within the district. Why has that never been effectuated?

A We have not been able to, until this year, locate enough personnel that are certified in that area. And also with insufficient funds, insufficient numbers, then we can use our funds to better serve them by arranging multi-district agreements.

* * * [126] * * *

[TESTIMONY OF ELAINE CARTER]

Q Mrs. Carter, did you want Shannon to be put into an L.D. Resource Class?

A We were offered a Resource Class. It was my opinion at that time with Shannon's emotional problem that I did not want her placed in a class with mentally retarded students because of her low self-esteem and her depression. She already felt like she was dumb and stupid, and I felt that would further these feelings, and we had worked for two months trying to improve the way she felt about herself, and I thought this would just further --

Q It was your understanding that supplementally retarded children would be in this L.D. Resource Class?

A Yes, educationally mentally retarded, but I also understood that the students would know where Shannon was going, her friends, and basically she would be categorized by them, and I felt like Shannon could not take this pressure.

Q Did you understand that some emotionally disturbed children would be in this L.D. Resource Class?

A Yes.

Q In addition to the mentally retarded children?

[127]

A Yes.

Q Was that your objection to the L.D. Resource Class?

A Yes. I felt like that Shannon just did not need the pressure of facing her friends.

Q Now, did any district representative describe to you and Mr. Carter all the various available options as itinerant, resource, self-contained?

A We talked about resource, the itinerant and self-contained, but they said they didn't have any students in the high school that was in self-contained. And it was my understanding that they did not have a self-contained class at that time.

Q Was it your understanding that that was out of the question?

A Well, nobody ever said that we'll develop a self-contained class just for Shannon.

Q It was your understanding it was not available?

A Yes.

* * * [165] * * *

MARGARET MITCHELL, SWORN

DIRECT EXAMINATION

BY MR. BURLINGTON:

Q Ma'am, please state your full name for the record.

A My name is Margaret Mitchell.

* * *

Q Where are you employed?

A I'm employed at Trident Academy.

Q In what capacity are you employed there?

A I am Director of Language Development.

* * * [169] * * *

[THE COURT:] Before you get into that, what about Trident Academy. Is it a school designed for people with learning deficiencies?

THE WITNESS: Yes, it is. We do no evaluations.

* * * [170] * * *

Q Are all of the children that attend Trident learning disabled?

A Yes.

Q If they weren't, they wouldn't be there?

A Right.
Q Can learning disabilities be categorized as mild, moderate and severe?
A Yes.
[171]
Q Would the majority of students at Trident fit into one of these three categories?
A Yes, the majority are severe.
Q The majority are severe. How long do development classes at Trident last?
A Between 42 and 45 minutes.
Q How many periods a day do the kids, the L.D. students get there?
A Each student would have one 42 minute period a day.
Q Now, when this language development is going on, what is the pupil to teacher ratio at that point in time?
A It can be one student to one teacher or it could be two students to one teacher.
* * * [172] * * *
Q What types of classes are offered at Trident?
A Other than the language development program which is at the heart of the program, we have a regular program of [173] academic classes like any high school. We do not have a wealth of electives, but we have the basic history, math, algebra, grammar, literature, that a high school in this state would have, and they are awarded credits for those classes.
Q You have regular academic classes?
A Yes.
Q And you have language development classes?
A Yes.
Q Approximately what would be the student to teacher ratio in these academic, non-language development classes?
A The first year that Shannon came, they were between five and eight in the academic classes. It's now, I'd say, five to twelve in some classes.
* * * [175] * * *
Q Briefly describe Shannon Carter's specific disability, as you understand it?

A She had a severe inability to read. She was distractable, had difficulty concentrating. She had an enormous lack of understanding of words, which means that anything that she had lecture fashion would be very difficult for her to understand, and anything she read would make it very difficult for her to understand.
[176]
Q Was Shannon functionally illiterate when she came to you in the fall of 1985?
A Yes.
* * *
Q I'll ask you to look at Plaintiff's Exhibit 15. What is that, briefly?
A This is a testing summary for Shannon Carter. This means that this is the September score of 1985. And then the following scores in May, testing was done in May of 1986. A years testing.
Q Ms. Mitchell, I'm not going to ask you to read those. The Judge can certainly do that. Is it true that a very large amount of progression, remediation was made in that one school year?
A Yes.
* * * [179] * * *
Q In your opinion, what would an appropriate educational program for Shannon consist of as she first came to you at Trident?
[180]
A She needed a low student teacher ratio, she needed small classes, she needed intense remediation in terms of reading and written expression. She needed assistance in finding out, in developing some confidence and self-esteem.
Q And is that, in fact, consistent with what she has received at Trident?
A Yes.
* * * [181]
Q Ms. Mitchell, do you feel that the reading goal enunciated on that I.E.P., I believe that a 5.4 reading level to a 5.8 reading

level, do you feel that that reading goal was appropriate for Shannon Carter at that time?

A No.

Q Why is that?

A Shannon, according to her records, had demonstrated that she had an average intelligence, and I would think that a student with that kind of intelligence could have made more progression.

Q Do you consider that goal an underestimation of what legitimate progress should have been?

A Yes.

Q You've just stated that your understanding of the I.E.P. is three periods of itinerant L.D. per week. Do you consider that appropriate or was that appropriate in your opinion for Shannon Carter at that point in time?

A Not to me. She was basically illiterate, and this was not sufficient to make her literate.

* * * [182] * * *

[TESTIMONY OF JAMES G. WARD, JR.]

Q Dr. Ward, state your full name for the record.

A James Granberry Ward, Jr.

Q Where do you reside?

A In Mount Pleasant, South Carolina.

Q What is your occupation?

A I'm a practicing pediatrician in the Charleston area.

Q In your pediatric practice, have you treated children who suffer from learning disabilities?

A I certainly have.

* * * [183] * * *

Q Please tell the court about your academic credentials.

A I have a B.S. Degree in Biology and Chemistry from Wake Forest University. I have a Master's Degree in Psychology from Southern Illinois University at Edwardsville. I have a Master's Degree in Genetics from the University of New Hampshire, and I have a Master's Degree in Special Education with a concentration in Learning Disabilities from the Citadel. I have a Medical Degree from the Medical

University of South Carolina, and have residency training in pathology and pediatrics, also.

I'm a Clinical Assistant Professor at the Medical University of South Carolina, and I'm an Adjunct Professor in the Graduate School in the Department of Education, in Psychology, at the Citadel.

* * * [184] * * *

Q What is your professional relationship with Shannon Carter?

A I am her physician and became her physician when Shannon became a boarding student at Trident Academy.

Q Was that in the Fall of 1985?

[185]

A No. I actually saw Shannon in April of 1985.

Q Have you seen Shannon more or less continuously since she entered school in 1985?

A Yes. I see Shannon every one to two months while she attends Trident Academy. The reason for that is, in addition to Shannon's learning disability, Shannon has a significant attention deficit disorder for which she receives a medication and I monitor her very closely, so from September to graduation, to the end of the school term in May, I see Shannon almost every month, but never beyond two month intervals.

* * * [186] * * *

Q Has Shannon's attention deficit disorder made her learning disability more problematic?

A Yes, it certainly has.

* * * [188] * * *

Q Dr. Ward, have you had the opportunity to read and study the psychological evaluation done by Mr. Bailey on Shannon Carter?

A Yes, I have.

* * * [190] * * *

Q Does this document as a whole evidence a severe learning disability?

A Yes, it does, and he shows it with the test scores [191] very, very plainly.

* * * [192] * * *

Q Dr. Ward, do you feel that three periods of L.D. itinerant help per week as per the I.E.P. in question was appropriate for Shannon Carter at the time that I.E.P. was made?

A No, I do not.

* * * [193] * * *

Q Do you feel that the school district special educational offering to Shannon as evidenced in that I.E.P. in [194] question provided her with a free and appropriate special education?

A It was going to be free, but it was not appropriate.

Q Is your reasoning for that that it was not intensive enough?

A It was not intensive enough, and as you can see, with the total immersion that she had at Trident Academy, this child is really now reading at a 12th grade level. Any exit exam in the state, this child will pass now, just like all of the children are going to be required to take in our state now.

* * * [196] * * *

Q Dr. Ward, do you feel that Shannon Carter's placement at Trident has afforded her with an appropriate special education for her unique needs?

A I do.

* * * [205] * * *

Q You indicated that the L.D. itinerant placement was not intense enough. What about an L.D. resource placement?

A Not intense enough. I was amazed that she was not offered a self-contained L.D. class.

* * * [208] * * *

MR. BURLINGTON: Just one redirect question. Dr. Ward, you testified about L.D. self-contained placements. Is Trident Academy one type of legitimate L.D. self-contained placement?

A Trident Academy is certainly self-contained because their entire curriculum is set up to teach and remediate the learning disabled child.

* * * [214] * * *

[TESTIMONY OF MARGARET MITCHELL]

Q It's true, isn't it, Ms. Mitchell, that there are at least two members of the Trident Academy faculty who are not certified teachers. Is that correct?

A That's correct.

Q One of those uncertified teachers is, was Shannon's language development teacher. Is that correct?

A That's correct.

[215]

Q The other teacher who is not certified as a teacher by the State of South Carolina or any other state, was she also one of Shannon's teachers?

A No.

Q Just her language development teacher?

A Her language development teacher, the first year, was not certified. The one last year was certified.

* * * [233] * * *

DANIEL H. BALCOM, SWORN
DIRECT EXAMINATION

BY MR. BURLINGTON:

Q Now, Sir, please state your full name.

A Daniel Hugh Balcom.

Q What is your work position, Mr. Balcom?

A I'm headmaster at Trident Academy.

Q Is that the Chief Executive Officer of Trident Academy?

A Yes, it is.

Q How long have you served there?

A Nine years.

Q Now, Mr. Balcom, has Trident received accreditation or approval from any agencies or organizations that accredit schools?

A Yes, we have. We are accredited by the Southern Association of Colleges and Schools and the Palmetto Association of Independent Schools.

Q Is Trident a boarding school?

[234]

A Yes. Sir, it's both day and boarding.

* * *

Q Has Trident ever accepted a student from a public school district under Public Law 94142?
A Yes, we have. In my nine years there, we've had approximately seven.
Q Was the tuition ever paid by the school district itself?
A Yes.
Q Any in South Carolina?
A Yes. About three in South Carolina, and four from North Carolina.
Q Would Trident now or in the future accept a student [235] from a public school district under 94142?
A Yes, we would.
Q In the past, have these tuition monies come directly to Trident from the school district?
A Yes. It is.

MR. BURLINGTON: That's all the questions I have.

THE COURT: Cross Examination.

CROSS EXAMINATION

BY MR. DAVIS:

Q Mr. Balcom. It's true that Trident Academy has never been state approved or state authorized for Shannon's placement at Trident Academy. Has it?
A There's never been a request. But we've always been approved by the State Department of South Carolina in the case of students applying to come under 94142.
Q Always been approved?
A Yes.
Q Do you have any reason to think if application was made for approval in Shannon's case, that approval would be granted?
A I have every reason to think it would be.
Q Do you have any reason to think it would be denied?
A No. I can't think of any offhand, although in every other situation, the approval was made prior to the student you know, coming.

* * * [239]

ROBERT BLACK, SWORN

DIRECT EXAMINATION

BY MR. DAVIS:

Q Could you state your name.
A Robert S. Black.
Q Dr. Black, how are you employed?
A I am employed by the State Department of Education for South Carolina, Director of Office of Programs for the Handicapped within the Department of Education.
Q How long have you been so employed?
A In South Carolina in the present position, 14 and a half years.

* * * [240] * * *

Q Could you describe for us the goal which the state agency of which you're the head plays in the implementation of the Education Of All Handicapped Children's Act in this state?
A It is required of the State Department of Education to develop regulations to implement federal regulations, which are spawned by federal law, and to develop procedures for the conduct of the regulations. To ensure that those regulations are carried out. To monitor. To determine compliance, degrees of compliance of the law and regulations and funding.

[241]

Q Is your office regularly engaged in monitoring various Special Education Programs that are operative in the public schools around this state?
A All programs of Special Education in the State are monitored at least every three years on a site visit. Monitoring occurs again continuously through application, investigation of complaints and a variety of other instruments. The on-site formal monitoring document is once every three years.

* * * [242] * * *

Q Is there any state law or state regulation promulgated and enforced by your Department with reference to a need on the part of private schools to be authorized or approved as a private school placement for 94142 funded students?
A Yes, sir.
Q What are those rules, what is the law and regulations with respect to that?
A Federal law, if I may paraphrase, and federal regulations required that the safeguards and all the rules and regulations applicable to a public school must be in place [243] with a

private school if that student is the recipient of public funds under 94142 for payment of that program. That would include, then, fundamentally, certified teachers, length of school day, that sort of thing.

Q Does the certification credentials or qualifications of the teachers employed by the private schools have any bearing on their eligibility for such approval?

A Yes, sir.

Q What bearing does it have?

A They must have the same certificate as public school teachers issued by the Department of Education.

Q Are you familiar with the existence of any specific state statute to that effect?

A There is a statute, a state statute that provides that anyone employed by the state in the public domain. I use public domain using school district, that they must be certificated, as a condition of employment, under certification as issued by the Department of Education.

* * * [244] * * *

Q Whenever a school makes an application or a bid for approval, does your office investigate the application in any way?

A Our office reviews the application to ensure that the requirements of regulations and law are met. There is a litany of requirements for that, yes, sir.

Q What possibility, if any, is there that the State Department would approve an application for approval on the part of a district which hired or employed uncertified teachers?

A We would -- we cannot approve an application if the teacher is not certified by the Department of Education.

* * * [253] * * *

[TESTIMONY OF ALFRED A. GRANT]

Q Dr. Grant, state your full name.

A Alfred Allison Grant.

Q What is your occupation, Dr. Grant?

A I'm in the practice of psychiatry, general psychiatry, adult and child psychiatry.

Q Where do you practice?

A I practice in Macon, Georgia.

Q Very briefly go over your academic background in terms of degrees.

A I received my Bachelor's Degree from Emory University, received my M.D. Degree from Medical College of Alabama, received my psychiatric training from Duke University Medical Training Center and completed a child and adolescent [254] fellowship at Duke University Medical Center.

Q Over your years of practice, have you examined numerous children with learning disabilities?

A Numerous.

Q Have you ever consulted with local school districts regarding Special Education?

A Yes.

Q Were some of these consultations regarding children with learning disabilities?

A Yes.

Q Are you associated with a psychiatric hospital?

A I am.

Q What component of that hospital?

A A children's in-patient unit and an adolescent in-patient unit.

Q Is your work there extensive?

A Yes, and both of these programs have, have there own educational system.

Q Do many of the children you see in this adolescent unit have learning disabilities?

A In the adolescent unit, I would say approximately one-half to two-thirds have learning disability elements to their dysfunction.

* * * [255] * * *

Q How many times grand total have you evaluated Shannon?

A I've evaluated Shannon in July of '85 and June of 1986.

Q And this evaluation dated July 15, 1985, you made a diagnosis?

A I did.

Q Very briefly, tell us the diagnosis in one or two words?

A One diagnosis was major depression, another diagnosis was attention deficit disorder with hyperactivity, and then language disability.

* * * [256] * * *

A Shannon's depression dated at least a year and a half to possibly two years before I saw her in July of 1985. This relatively coincides with her entering the public school system. I could find no factors other than Shannon's ongoing difficulty with academics and the reaction of the school personnel to that, and the reaction of her parents to what they were told by the school Shannon should be doing.

Q Did you find Shannon's self-esteem and self-concept to be low?

A Very low.

Q Had Shannon expressed any suicidal ideations?

A She had given thoughts to hurting herself. I think. If I recall specifically, she had contemplated cutting her wrists.

Q All right. As a result of your evaluation, did you find Shannon's learning disabilities to be due to a lack of effort or lack of motivation?

A Absolutely not.

Q Were these learning problems due to any passive resistance or manipulative behaviors?

A Absolutely not.

Q Did you notice any feelings upon examining Shannon that she felt she was stupid or dumb?

[257]

A She used the words both dumb and stupid.

Q Did you detect a sense of failure?

A Profound failure and profound inadequacies.

* * * [258] * * *

Q In your opinion, does the evaluation show a significant learning disability?

A Profound.

* * *

Q In your opinion, is the reading goal advancement of four months advancement in a full year consistant with her intellectual potential?

A Not only is it not consistent with her potential but it is extremely detrimental to her psychologically.

* * * [259] * * *

Q Given the seriousness of Shannon's deficits as shown by the school district April evaluation, is it your opinion that three periods of learning disability itinerant classes a week would have been inappropriate for her?

[260]

A That would have been grossly inadequate.

Q Are you aware of the type of Special Education Program offered at Trident Academy at Mount Pleasant?

A My understanding is that Trident offers a small teacher to student ratio, that it involves intensive remediation in the areas that need remediated, and that they also provide a one-on-one daily program to assist in special areas. I believe with Shannon it's in terms of language development.

* * *

Q All right. Would you consider placement at Trident to have been an appropriate special education for Shannon at the time you first evaluated her in 1985?

A Yes.

Q In Plaintiff's Exhibit 24, the re-evaluation, as you put it, did you consider an additional year at Trident appropriate for Shannon at the time of your re-evaluation in June of 1986?

A A minimal one year addition.

Q Now, sir, in your opinion, was Trident the maximal or [261] optimal special educational offering for Shannon?

A The maximal or optimal? I think when you are considering the type of educational placement that can serve a youngster with a learning disability to the degree that Shannon has, I think on the minimal. I would say full day L.D. classroom placement would be the bare minimum. I would think. Now the maximums go up to special residential schools that go around the year, 12 months. Part of the reason they do that is so that the student does not lose learned information over a summer break. And learning disability students, one of the aspects of their dysfunction is they will learn information but

can easily lose that information. They have to repetitively relearn.

So, I think you're talking about a minimum of a full day L.D. class in the local community along to a residential extensive type placement. So in considering Trident, I would consider it appropriate, but it certainly is not maximum and not optimal.

Q It's not the end of the line?

A No, not when you look around the United States and what's available.

Q But in your opinion, it provided an appropriate setting for her?

A An appropriate setting.

* * * [266] * * *

[TESTIMONY OF SHIRLEY A. RITTER]

Q Please state your name for the record, doctor?

A Shirley A. Ritter.

Q All right. Where do you reside?

A In Greenville, South Carolina.

Q What is your occupation?

A I'm Assistant Professor at Furman University.

Q You teach at Furman. Have you taught Special Education courses at Furman?

A Yes, should I elaborate?

Q If you wish.

A Introduction to Special Education, Characteristics of Learning Disability, Procedures for Teaching, Learning Disabled Behavior, Advanced Procedures of the same. Simplifying Student's Practices, Student Teaching, the majority of these in undergraduate and graduate level.

Q Would these practicums involving these teachers, would some of them be in L.D. classrooms?

A Very much so, and student teaching also in students identified as having learning disabilities.

* * * [274] * * *

Q Doctor, given your knowledge of the education that Trident provides as per your observation, and given the deficit shown in Shannon's April, 1985 evaluation and the special education

program instituted for her via the May 1, 1985 I.E.P., in your opinion, was the educational placement of L.D. itinerant for three periods per week offered by the school district appropriate?

A To me it was not appropriate. It was inadequate.

Q Was the private school chosen by the parents, Trident, an appropriate special education placement under 94142?

A What I see Shannon, on paper at this time, needing for appropriate would be a program, self-contained program that would provide a multi-sensory approach that would provide some basic reading, developmentally reading improvement, which Trident, which is incorporated in Trident, under the language development, what they call language development classes: a [275] supportive environment, which would be the teacher of that self-contained class. Other teachers who might be involved with Shannon in anything in which she might be mainstreamed in content or non-academic areas. And a low teacher student ratio. So for those reasons, I see Trident as an appropriate placement.

Q Doctor, would a conventional in-district L.D. self-contained placement be hard pressed to educate a child with the kind of deficit that Shannon has?

A Yes.

* * * [364]

[TESTIMONY OF JOHN C. RICHARDSON]

Q Would you state your name, please, sir.

A John C. Richardson.

Q Where are you employed?

A Clemson University.

Q What is your position at Clemson University?

A I'm an Associate Professor in the College of Education.

* * * [388] * * *

Q Did you hear testimony that the great majority of the teachers at Trident, as a matter of act, all but two are certificated in Special Education?

A Yes, sir.

Q Now, in a local school district L.D. resource placement, would the great majority of all the other academic area teachers be certificated in Special Education?

A No.

* * *

May 9, 1989 Proceedings

---

* * * [6] * * *

[MR. DAVIS:] Dr. Nagle would be called as the Court's witness and you would elicit from him the testimony that you are looking for, answers to questions you have to ask, and then we would be given the opportunity to ask questions following [7] the Court's examination of Dr. Nagle.

* * * [27] * * *

[TESTIMONY OF RICHARD J. NAGLE]

Q Dr. Nagle, do you feel you know enough about Trident to venture an opinion as to whether they provided an appropriate Special Education for Shannon?

A I would say given the change in test scores, I would say that they did a very effective job.

* * * [49] * * *

Q One question bearing on your assertion that Shannon should have been -- don't let me put words in your mouth, but very probably should have been identified earlier.

Is it your understanding of the Education For All Handicapped Children's Act, that school districts have an affirmative duty to try and find and identify students that would qualify for special education?

A That is correct.

Q It's not entirely on the parents to present the child to the school district; is that true?

A That's correct.

Yes.

Q The school district is supposed to look for handicapped kids?

A That's correct.

* * * [56] * * *

[TESTIMONY OF SHIRLEY A. RITTER]

Q Now, Dr. Ritter, since we last convened, you have examined both Mr. Bailey's evaluation of April '85, and Dr. Nagle's 1988 evaluation?

A I have.

[57]

Q Okay.

Generally speaking, taken in the aggregate, does Dr. Nagle's evaluation show a mild, moderate or large amount of achievement gain on the part of Shannon?

A Overall, they show considerable or large gains for Shannon.

Q I believe you heard there's no need to enumerate the individual scores over again, but on the Wide Range Achievement Test, the WRAT, you heard -- and I see from your notes that the scores went in reading from 6.9 to 9-B; 4.6 to 9-B, and 6.9 to 11-B in spelling.

Now, in reading, the 6.8 level to the 9-B level, how significant do you see, in your opinion, that amount of forward progress?

A Again, I see that as substantial, in terms that she had been performing below grade level, and she was making similar progress, as would a normal non-handicapped individual would be making; or in light of the standard scores, would be similar, in that she was making the similar levels of gains, and was not getting any further back.

Whereas when she was tested in April of '85, she was in ninth grade, and she was performing below grade level, or with a lower standard score.

Three years later, she was holding that one-year growth or one-year gain per year of instruction, which is [58] anticipated of not handicapped students of the average student.

Similarly, in standard scores, she was making a similar gain or holding her own with a tendency towards a gain, but holding her own and not getting any further behind.

* * * [60] * * *

Q Dr. Ritter, we were talking about the school district May First, 1985, IEP.

What's your recollection of the reading and math advancement goals?

A Excuse me, that it was four months for reading and for math, for the -- for one academic year.

Q Okay.

[63]

Q In your opinion, was this four-month goal enough to remediate her and bring her back up to level?

A No.
The goal was much lower than what it should have been for her, and would not have brought her to performing at an increased rate.

* * * [64]

Q Going back to Dr. Nagle's test results, are they one valid indicator that the schooling Shannon did receive at Trident Academy enabled her to adequately progress from grade to grade?

A To me, they certainly are one valid and reliable indicator.

Q Okay.
Now, would you say that her progress at Trident, the three years she was there, would you say her progress there was incremental or minimal?

A It certainly was incremental at Trident.

Q Was it small or minimal?

A No.

Q It was substantial.

A Okay.

Q She was making one year goal per year of instruction, roughly.
And in some areas, greater than that.
And, again, using the grading equivalency, when looking at the standard scores, she was holding her own, she was being compared to more sophisticated students, and still able to hold her place or -- in terms of the standard scores are increased slightly, not significant level, but a tendency an increase.
So yes, the gains were substantial.

* * * [123] * * *

EMORY CARTER, was called as a witness, after having been first duly sworn, on his oath, testified as follows:

* * * [131] * * *

Q Did the school district do anything to lead you to believe that they would educate Shannon outside of the Timmonsville School District No. 4?

A No, sir.
We had no knowledge of this was even available, and it was never offered.

Q Never presented to you?

A Never presented. We had no knowledge of anyone being able to go to another school district.

* * *

**IN THE SUPREME COURT
OF THE UNITED STATES**

[Caption Omitted in Printing]

Order Granting Petition for a Writ of Certiorari, limited to Question 1, entered February 22, 1993.